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SENATE BILL 1583 By
Cohen

HOUSE BILL 1858
By Kernell

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 29
and Title 63, relative to acupuncture.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. It is the purpose of this act to promote the health, safety, and welfare of the people of Tennessee by establishing an orderly system of acupuncture licensing and to provide a valid, effective means of establishing licensing requirements without undue financial burden to the people of Tennessee, through use of a national certifying board which has been established to certify the competency of acupuncturists.

SECTION 2. Tennessee Code Annotated, Title 63, is amended by adding Sections 3 through 11 as a new chapter thereto.

SECTION 3. As used in this act, unless the context requires otherwise:

(1) "Acupuncture" means a form of health care developed from traditional and modern Oriental medical concepts that employs Oriental medical diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease;

(2) "Board" means the Tennessee acupuncture licensing board;

(3) "NACSCAOM" means the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine;

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(4) "NCCA" means the National Commission for the Certification of Acupuncturists;

(5) "Practice of acupuncture" means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon Oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, and the recommendation of dietary guidelines and therapeutic exercise based on traditional Oriental medicine concepts;

(6) "ADS" means a acupuncture detox specialist; and

(7) "NADA" means the National Acupuncture Detox Association.

SECTION 4.

(a) It is unlawful to practice acupuncture for compensation without a license issued pursuant to this act. This restriction does not apply to the following:

(1) Other health care professionals practicing within the scope of their license;

(2) A student practicing acupuncture under the direct supervision of a licensed acupuncturist as part of a course of study approved by the board; or

(c) ADSs practicing within a substance abuse/recovery setting as directed under NADA guidelines.

(b) A violation of this section is a Class C misdemeanor.

SECTION 5.

(a) There is hereby created the acupuncture licensing board.

(b) The acupuncture licensing board shall consist of five (5) members appointed by the governor. Three (3) of the members shall be licensed to practice acupuncture in Tennessee, one (1) member shall be a consumer member who is not employed in a health care profession and one (1) member shall be a medical doctor who uses

acupuncture in his or her practice. The three (3) acupuncturists initially appointed need not be licensed at the time of their appointments, but must meet all the qualifications for a license.

(c) Of the initial appointments to the board, two (2) members shall be appointed for a term of three (3) years, two (2) members for a term of two (2) years, and one (1) member for a term of one (1) year. All regular appointments thereafter shall be for terms of four (4) years. No person may serve more than two (2) consecutive full terms as a member of the board. Each member shall serve on the board until a successor is appointed. Vacancies shall be filled by appointment of the governor for the unexpired term.

(d) At the board's first meeting each year after the new members have been appointed, the members shall choose one (1) member to chair the board for the year and another to serve as vice-chair. No person may chair the board for more than five (5) consecutive years.

(e) The board shall meet at least once each year within forty-five (45) days after the appointment of the new members. The board shall meet at other times as needed to perform its duties.

(f) Members shall not receive compensation for their services but shall receive reimbursement for their travel expenses. All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations promulgated by the department of finance and administration and approved by the attorney general.

SECTION 6.

(a) The board is authorized to:

(1) Issue, suspend, and revoke licenses, collect fees, investigate violations of this act, and otherwise administer the provisions of this act.;

(2) Promulgate, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, rules and regulations necessary to implement the provisions of this act;

(3) Issue advisory opinions interpreting this act;

(4) Adopt and use a seal to authenticate official documents of the board;

(5) Employ such personnel as may be needed to carry out its functions, and purchase, lease, rent, sell, or otherwise dispose of personal and real property for the operations of the board; and

(6) Expend funds as necessary to carry out the provisions of this act from revenues generated by fees collected under this act and interest earned thereon.

SECTION 7.

(a) To receive a license to practice acupuncture, a person must document:

(1) Current active status as a Diplomate in Acupuncture of the NCCA;

(2) Successful completion of a three-year post-secondary training program or acupuncture college program which is NACSCAOM credited or in candidacy status or which meets NACSCAOM's standards, and

(3) Successful completion of an NCCA approved clean needle technique course.

(b) The board shall waive the requirements of subsection (a) and shall grant a license of acupuncture to an applicant, residing in Tennessee upon the effective date of this act, who presents evidence satisfactory to the board no later than December 31, 1997, of successful completion of a NACSCAOM-approved college program or an NCCA approved apprenticeship or tutorial program.

SECTION 8. A license to practice acupuncture must be renewed every two (2) years. To renew a license, a person must submit proof of current active NCCA certification in acupuncture.

SECTION 9. The board may deny, suspend or revoke a license, require remedial education, or issue a letter of reprimand, if an applicant or licensed acupuncturist:

(1) Engages in false or fraudulent conduct which demonstrates an unfitness to practice acupuncture, including:

(A) Misrepresentation in connection with an application for a license or an investigation by the board;

(B) Attempting to collect fees for services which were not performed;

(C) False advertising, including guaranteeing that a cure will result from an acupuncture treatment; or

(D) Dividing, or agreeing to divide, a fee with anyone for referring the patient for acupuncture services;

(2) Fails to exercise proper control over one's practice by:

(A) Delegating professional responsibilities to a person the acupuncturist knows or should know is not qualified to perform; or

(B) Failing to exercise proper control over unlicensed personnel working with the acupuncturist in the practice;

(3) Fails to maintain records in a proper manner by:

(A) Failing to keep written records describing the course of treatment for each patient;

(B) Refusing to provide a patient upon request records that have been prepared for or paid for by the patient; or

(C) Revealing personally identifiable information about a patient, without consent, unless otherwise allowed by law;

(4) Fails to exercise proper care of a patient, including the exercising or attempting to exercise, undue influence within the acupuncturist/patient

relationship by making sexual advances or requests for sexual activity, or making submission to such conduct a condition of treatment;

(5) Displays substance abuse or mental impairment to such a degree as to interfere with the ability to provide safe and effective treatment;

(6) Is convicted or pleads guilty or no contest to any crime which demonstrates an unfitness to practice acupuncture;

(7) Negligently fails to practice acupuncture with the level of skill recognized within the profession as acceptable under such circumstances;

(8) Willfully violates any provision of this act or rule of the board; or

(9) Has had a license denied, suspended, or revoked in another jurisdiction for any reason which would be grounds for such action in Tennessee.

SECTION 9.

(a) Acupuncturists shall use only pre-sterilized, disposable needles in their administration of acupuncture treatments. The use of staples in the practice of acupuncture is prohibited.

(b) Health practices shall include:

(1) Hands shall be washed with soap and water or other disinfectant before handling needles and between treatment of different patients;

(2) Skin in the area of penetration shall be thoroughly swabbed with alcohol or other germicidal solution before inserting needles; and

(3) No person shall be allowed to practice acupuncture and related techniques without first having passed a nationally recognized clean needle technique course.

SECTION 10. The board shall set fees relative to the application, licensing and renewal thereof in amounts sufficient to pay all of the expenses of the board directly attributable to the performance of its duties pursuant to the provisions of this act.

SECTION 11.

(a) The titles "licensed acupuncturist" and "acupuncturist" may be used by, and only by, persons licensed under this act. Possession of a license under this act does not by itself entitle a person to identify himself or herself as a doctor or physician.

(b) Each person licensed to practice acupuncture shall post the license in a conspicuous location at such person's place of practice.

SECTION 12. Tennessee Code Annotated, Section 4-29-220(a), is amended by adding a new item thereto, as follows:

() Tennessee acupuncture licensing board, created by Section 5 of this act;

SECTION 13. For the purpose of making appointments to the board and for promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect January 1, 1998, the public welfare requiring it.